

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BGC PARTNERS, INC., G&E ACQUISITION
COMPANY, LLC, and BGC REAL ESTATE
OF NEVADA, LLC,

Case No. 2:15-cv-00531-RFB-GWF

ORDER

Plaintiffs,

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AVISON YOUNG (CANADA) INC.; AVISON YOUNG (USA) INC.; AVISON YOUNG NEVADA, LLC, MARK ROSE, THE NEVADA COMMERCIAL GROUP; JOHN PINJUV and JOSEPH KUPIEC; DOES 1 through 5; and ROE BUSINESS ENTITIES 6 through 10.

Defendants.

I. INTRODUCTION

This case is before the Court on Plaintiffs' Motion to Remand (ECF No. 11). This case arises from Defendants' alleged actions in tortiously and illegally interfering with Plaintiffs' affiliate Grubb & Ellis's businesses. See Compl., ECF No 1-2. For the reasons stated below, the Court denies Plaintiffs' Motion to Remand.

II. BACKGROUND

A. Factual Allegations

The following is alleged in Plaintiffs' Complaint. ECF No. 1-2. Grubb & Ellis ("G&E"), an affiliate of Plaintiff BGC Partners, and Defendant Avison Young ("AY") are large US and Canadian real estate brokerage firms, respectively. Compl. at ¶ 1. Plaintiffs allege that in 2008,

1 AY began an aggressive hiring campaign in the US and tortiously and illegally looted Plaintiffs'
 2 commissions, personnel, offices, business, trade secrets, and business opportunities. Id. at ¶ 2.
 3 Plaintiffs allege that AY did so by inducing a G&E affiliate to breach contracts and join AY;
 4 misappropriated G&E trade secrets; and committed and induced larceny by rewarding the affiliate
 5 and its principal for concealing and stealing trade secrets and business opportunities that belonged
 6 to G&E. Id. ¶ 3. Defendants continued this enterprise even after G&E filed for bankruptcy on
 7 February 20, 2012 by repeatedly committing theft from a bankruptcy estate. Id. ¶¶ 4, 24. Plaintiffs
 8 allege that BGC was the beneficial owner of G&E's contract rights and assets, having purchased
 9 them free and clear of any liens or interest in accordance with the final sale order of the Bankruptcy
 10 Court entered March 16, 2012. Id. ¶¶ 10, 25. Plaintiffs acquired G&E on April 5, 2012. Id. ¶ 23.

11 Plaintiffs allege 13 claims against various Defendants, including: tortious interference with
 12 contractual relationships; violations of Nevada's Racketeer Influenced Corrupt Organization Act
 13 ("Nevada RICO Statute"); breach of contract; breach of the covenant of good faith and fair dealing;
 14 aiding and abetting the breach of the covenant of good faith and fair dealing; conspiracy; theft of
 15 trade secrets in violation of Nevada Trade Secrets Act; breach of fiduciary duty; aiding and
 16 abetting of breach of fiduciary duty; conversion; and unjust enrichment. See Id.

17 **B. Procedural History**

18 On March 23, 2015 Defendants removed the instant case to this Court. ECF No. 1.
 19 Plaintiffs filed a Motion to Remand on April 20, 2015. ECF No. 11. A hearing regarding this
 20 Motion was held on March 29, 2016. ECF No. 44. On March 31, 2016, the Court issued a minute
 21 order denying Plaintiff's Motion to Remand. ECF No. 45.

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 23 **III. LEGAL STANDARD**

24 **A. Removal Jurisdiction**

25 U.S.C. § 1441(a) grants district courts jurisdiction over state court actions that
 26 originally could have been brought in federal court. "Removal and subject matter jurisdiction
 27 statutes are strictly construed, and a defendant seeking removal has the burden to establish that

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1 removal is proper and any doubt is resolved against removability.” Hawaii ex rel. Louie v. HSBC
 2 Bank Nevada, N.A., 761 F.3d 1027, 1034 (9th Cir. 2014) (internal quotation marks omitted).

3 **B. Federal Question Jurisdiction**

4 A district court has “original jurisdiction of all civil actions arising under the Constitution,
 5 laws, or treaties of the United States.” 28 U.S.C. § 1331. An action “arises under” federal law
 6 when “federal law creates the cause of action.” Merrell Dow Pharm. Inc. v. Thompson, 478 U.S.
 7 804, 808 (1986). But even where a claim finds its origins in state rather than federal law, the
 8 Supreme Court has identified a “special and small category” of cases in which federal question
 9 jurisdiction still exists. Empire Healthchoice Assurance, Inc., v. McVeigh, 547 U.S. 677, 699, 701
 10 (2006). Federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily
 11 raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without
 12 disrupting the federal-state balance approved by Congress. Grable & Sons Metal Prods., Inc. v.
 13 Darue Eng'g & Mfg., 545 U.S. 308, 313-14 (2005). Where all four Grable requirements are met,
 14 jurisdiction is proper because there is a “serious federal interest in claiming the advantages thought
 15 to be inherent in a federal forum,” which can be vindicated without disrupting Congress’s intended
 16 division of labor between state and federal courts. Id. at 313.

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 18 **IV. DISCUSSION**

19 In their Motion to Remand, Plaintiffs argue that remand is appropriate because the causes
 20 of action alleged in the Complaint are state law claims unrelated to the G&E bankruptcy case.
 21 Plaintiffs argue that “[a]lthough the purchase agreement left a theoretical possibility that the
 22 bankruptcy estate could recover if Plaintiffs decide to commence the lawsuits contemplated by the
 23 purchase agreement and if they actually recover assets in excess of \$20 million, that possibility –
 24 and any effect upon the bankruptcy liquidation – is speculative at best. In addition, the bankruptcy
 25 proceeding at issue has been closed.” Mot. Remand, ECF No. 11 at 2. Plaintiffs make two main
 26 arguments: 1) the Court lacks bankruptcy jurisdiction; and 2) the Court must and should abstain
 27 from exercising jurisdiction even if the Court could exercise jurisdiction over the removed claims
 28 as related to the G&E bankruptcy.

1 In response, Defendants argue that the Court has subject matter jurisdiction because the
 2 causes of action in the Complaint are directly related to the G&E bankruptcy. ECF No. 1, Removal
 3 Pet. at 3. “Specifically, the Complaint alleges that Defendants ‘repeatedly commit[ed] criminal
 4 theft from [the] bankruptcy estate in violation of 18 U.S.C. § 152’ (Complaint, ¶ 4); that
 5 Defendants improperly violated the automatic stay by concealing assets from the bankruptcy estate
 6 (Complaint, ¶ 59); and that Defendants continue to engage in acts which harm the bankruptcy
 7 estate (*see, e.g.*, Complaint, ¶¶ 4, 6, 34, 44, 102, 122, 129, 137, 138).” Id. Defendants also argue
 8 that Plaintiffs also seek injunctive relief to “end this conduct,” which Plaintiffs allege is causing
 9 harm to the bankruptcy estate. (Complaint, ¶¶ 4, 6, 34, 44, 59, 102, 122, 129, 137, 138.)” Id.
 10 Defendants argue that there is jurisdiction and removal is therefore appropriate because: 1) the
 11 case is “related to” a bankruptcy proceeding; 2) the case “arises under” the bankruptcy code; and
 12 3) the Court need not and should not abstain. Opp’n, ECF No. 15. The Court addresses these
 13 arguments below.

14 **A. “Related to” jurisdiction**

15 **1. Legal Standard**

16 “A bankruptcy court’s ‘related to’ jurisdiction [under 28 U.S.C. § 1334(b)] is very broad,
 17 including nearly every matter directly or indirectly related to the bankruptcy.” In re Wilshire
 18 Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013) (internal quotation omitted). “[R]elated to”
 19 jurisdiction arises “if the outcome could alter the debtor’s rights, liabilities, options, or freedom of
 20 action (either positively or negatively) and which in any way impacts upon the handling and
 21 administration of the bankrupt estate.” In re Pegasus Gold Corp., 394 F.3d 1189, 1193-94 (9th Cir.
 22 2005). Where the “outcome [of an action] could conceivably have any effect on the estate being
 23 administered in bankruptcy” a federal court may exercise jurisdiction under the doctrine of related-
 24 to-bankruptcy jurisdiction. In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988).

25 In the Ninth Circuit, “[t]he ‘close nexus’ test determines the scope of bankruptcy court’s
 26 post-confirmation ‘related to’ jurisdiction....[T]he test encompasses matters ‘affecting the
 27 ‘interpretation, implementation, consummation, execution, or administration of the confirmed
 28 plan.’ The close nexus test ‘recognizes the limited nature of post-confirmation jurisdiction but

1 retains a certain flexibility.” In re Wilshire Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013)
2 (internal citations omitted). The “close nexus” test requires particularized consideration of the
3 facts and posture of each case, as the test contemplates a broad set of sufficient conditions and
4 ‘retains a certain flexibility.’ Such a test can only be properly applied by looking at the whole
5 picture.” Id. at 1289 (internal citations omitted). For example, in Pegasus Gold, the Ninth Circuit
6 found that the Appellees allege that “the State breached the Plan and the Zortman Agreement; the
7 State breached the covenant of good faith and fair dealing with respect to these agreements; and
8 the State committed fraud in the inducement at the time it entered into the Plan and the Zortman
9 Agreement. Among the remedies sought for these claims are disgorgement of the \$1,050,000 paid
10 to the State as part of the settlement and rescission of the Zortman Agreement. Resolution of these
11 claims will likely require interpretation of the Zortman Agreement and the Plan.” In re Pegasus
12 Gold Corp., 394 F.3d 1189, 1194 (9th Cir. 2005).

a. Discussion

14 Plaintiffs argue that there is no “related to” jurisdiction for several reasons. First, Plaintiffs
15 argue that interpretation of bankruptcy court orders or sale documents does not confer related to
16 jurisdiction. Reply at 5. Second, Plaintiffs’ claims do not hinge on bankruptcy law questions. *Id.*
17 at 7. Third, a potential recovery of funds by the G&E bankruptcy estate does not grant “related to”
18 jurisdiction. *Id.* at 8.

19 First, Defendants argue that Plaintiffs' claims require interpretation of agreements key to
20 the bankruptcy, namely, the Second Amended and Restated Asset Purchase Agreement ("APA"),
21 and the bankruptcy court rulings. Opp'n. at 11. Second, Defendants further argue that the
22 Plaintiffs' claims require resolution of bankruptcy law questions. Id. at 13. Specifically, Plaintiffs
23 allege in Counts 1, 4, and 13, purported violations of the automatic stay, termination of contracts
24 that were supposedly barred by bankruptcy law, and allegedly unauthorized receipt of property
25 from the bankruptcy estate. Id. Third, Defendants argue that Plaintiffs' claims may impact the
26 debtor's estate if recovery exceeds \$20 million per the APA. Id. at 14.

27 The Court finds that “related to” jurisdiction exists here. Plaintiffs argue in their Complaint
28 that the Defendants “acted in defiance of the protections Grubb & Ell is was due under the

1 bankruptcy laws. Plaintiffs bring this lawsuit to recover their damages and to stop Defendants from
 2 continuing their tortious and illegal conduct.” Compl. at ¶ 2. Plaintiffs further state that Defendants
 3 engaged in illegal activity “by repeatedly committing criminal theft from a bankruptcy 27 estate
 4 in violation of 18 U.S.C. § 152.” Id. at ¶ 4. Specifically, Plaintiffs allege that Defendants engaged
 5 in an unlawful scheme and conspiracy to “plunder” Plaintiffs’ real estate brokerage assets when
 6 the automatic stay in the bankruptcy proceeding was in effect. Id. at ¶¶ 34, 44.

7 Based on the language in Pegasus Gold and the causes of action alleged in Plaintiffs’
 8 Complaint, Plaintiffs’ claims require interpretation of documents associated in the G&E
 9 bankruptcy, namely the APA, such that “related to” jurisdiction exists in this case. 394 F.3d at
 10 1194. While Plaintiffs argue that interpretation of the APA or bankruptcy court rulings should not
 11 give rise to “related to” jurisdiction, the Court finds that Pegasus Gold states otherwise. Just as the
 12 Ninth Circuit held in Pegasus Gold that “[r]esolution of these claims will likely require
 13 interpretation of the Zortman Agreement and the Plan,” (394 F.3d at 1194), so too do Plaintiffs’
 14 claims in the instant case require interpretation of the APA, which Plaintiffs admit was filed with
 15 the bankruptcy court on March 21, 2012. Mot. Remand at 4.

16 The Court also finds that it must resolve questions of bankruptcy law to resolve Plaintiffs’
 17 claims. Plaintiffs repeatedly allege violations of bankruptcy law throughout their Complaint, which
 18 serve as a basis for their state law claims. See, e.g., Compl. at ¶ 4 (Defendants engaged in illegal
 19 activity “by repeatedly committing criminal theft from a bankruptcy 27 estate in violation of 18
 20 U.S.C. § 152.”). Cf. In re Ray, 624 F.3d 1124, 1135 (9th Cir. 2010) (“the bankruptcy court did not
 21 retain ‘related to’ jurisdiction for this breach of contract action that could have existed entirely
 22 apart from the bankruptcy proceeding and did not necessarily depend upon resolution of a
 23 substantial question of bankruptcy law.”). Therefore, this case is distinguishable from cases where
 24 there was no related to jurisdiction because the claims “did not necessarily depend upon resolution
 25 of a substantial question of bankruptcy law and which could have existed entirely apart from the
 26 bankruptcy proceeding” and where “[t]he breach of contract claim...had a relationship to the
 27 bankruptcy proceeding only because the bankruptcy court had approved a settlement agreement

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1 that sold property free and clear of the right of first refusal.” In re Wilshire Courtyard, 729 F.3d
 2 1279, 1288 (9th Cir. 2013) (internal citations and quotations omitted).

3 Given these findings, the Court does not address the question of whether the potential to
 4 recover assets in excess of \$20 million per the APA would affect the implementation and execution
 5 of the confirmed plan. However, the Court notes that it does not find that the authority cited by
 6 Defendants, In re Wilshire Courtyard, 729 F.3d 1279, 1290 (9th Cir. 2013), expressly supports the
 7 contention that a potential recovery amount in excess of that stated in the APA would grant this
 8 Court related to jurisdiction via the close nexus test. Opp’n at 14. Therefore, the Court finds that
 9 there is “related to” jurisdiction in this case, and remand is inappropriate at this time.

10 **B. “Arising Under” Jurisdiction**

11 **1. Legal Standard**

12 The district court has original jurisdiction “of all civil proceedings arising under title 11,
 13 or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b); Celotex Corp. v. Edwards,
 14 514 U.S. 300, 307 (1995). “[C]laims that arise under or in Title 11 are deemed to be ‘core’
 15 proceedings...’ A nonexhaustive list of core proceedings is set out in 28 U.S.C. § 157, which
 16 includes ‘matters concerning the administration of the estate.’ The list also includes ‘other
 17 proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-
 18 creditor or the equity security holder relationship...’ Core proceedings arising in title 11 are
 19 matters ‘that are not based on any right expressly created by title 11, but nevertheless, would have
 20 no existence outside of the bankruptcy.’” Schultze v. Chandler, 765 F.3d 945, 948 (9th Cir. 2014),
 21 as amended (Aug. 1, 2014).

22 The Ninth Circuit has held that post-petition state law claims against trustees of the estate
 23 are core proceedings. See Schultze v. Chandler, 765 F.3d 945, 948 (9th Cir. 2014), as amended
 24 (Aug. 1, 2014) (“In Harris Pine Mills, we held that a post-petition state-law claim against a
 25 bankruptcy trustee arising out of the sale of estate property was a core proceeding. Id. at 1438.
 26 Similarly, in Walsh v. Northwestern National Insurance Co. of Milwaukee, Wisconsin (In re
 27 Ferrante, 51 F.3d 1473, 1476 (9th Cir. 1995), we held that a post-petition breach of fiduciary claim
 28 against a trustee was a core proceeding.”).

2. Discussion

2 Defendants make two arguments as to why there is “arising under” jurisdiction in this case.
3 First, Defendants argue, citing to non-binding case law, that because Plaintiffs assert claims and
4 seek recovery based on alleged violations of the automatic stay, original jurisdiction lies with this
5 Court. Opp’n at 18. Second, Defendants argue that to the extent that the value of Plaintiffs’ claims
6 exceeds \$20 million, Plaintiffs concede that the estate will recover the excess amount and
7 therefore, this case may affect “the liquidation of the assets of the estate,” implicating the “catch-
8 all” provision of 28 U.S.C. § 157. Id. In response, Plaintiffs cursorily argue that none of their
9 claims arise under Title 11 or under federal law. Opp’n at 11. At the March 2016 hearing, Plaintiffs
10 further argue that they do not seek relief for the alleged violation of the stay. Tr. at 46:24.

11 While the Court finds that there is “related to” jurisdiction in this case, the Court is
12 unpersuaded by Defendants’ arguments regarding “arising under” jurisdiction. The Court is
13 unconvinced that Plaintiffs’ claims are core proceedings that implicate matters concerning
14 administration of the estate. See 28 U.S.C. § 1334(b); Schultze, 765 F.3d at 948. Defendants have
15 not cited to binding case law that suggests that claims relating to a violation of an automatic give
16 rise to “arising under” jurisdiction. While Defendants cite to Swartz v. Nationstar Mortgage, LLC,
17 No. 14-08649, 2015 WL 846789 (C.D. Cal. Feb. 26, 2015), the Court notes that in that case, the
18 plaintiff there asserted causes of action for willful violations of an automatic stay by proceeding
19 with a trustee sale. This finding is consistent with the line of Ninth Circuit cases cited in Schultze
20 but does not support a finding of “arising under” jurisdiction in this case. 765 F.3d 945.

21 Here, in contrast, Plaintiffs do not assert their claim against a defendant-trustee. Rather,
22 Plaintiffs allege claims against a third party who allegedly plundered Plaintiffs' assets that were a
23 part of the bankruptcy estate. See, e.g., Compl. at ¶ 31 ("Avison Young could have sought the
24 assets of Grubb & Ellis through the bankruptcy sale, but did not even attempt to bid for Grubb &
25 Ellis' assets there. Instead, the Company determined to subvert the bankruptcy process and steal
26 as many of those assets, including commissions, contracts, offices, trndc secrets and personnel, as
27 possible through an illegal scheme to loot Grubb & Ellis, including but not limited to Grubb &

1 Ellis' Nevada affiliate."). Therefore, the Court does not find that "arising under" jurisdiction exists
 2 based on the facts before the Court, consistent with Schultze. 765 F.3d 945.

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4 **C. Abstention**

5 **1. Legal Standard**

6 Abstention is mandatory under 28 U.S.C. § 1334(c)(2) where, "[u]pon timely motion of a
 7 party in a proceeding based upon a State law claim or State law cause of action, related to a case
 8 under title 11 but not arising under title 11 or arising in a case under title 11... the district court
 9 shall abstain from hearing such proceeding if an action is commenced, and can be timely
 10 adjudicated, in a State forum of appropriate jurisdiction."

11 Courts may also exercise their discretion in abstaining under 28 U.S.C. §§ 1334(c)(1) and
 12 1452(b). Abstention reflects "a clear congressional policy ... to give state law claimants a right to
 13 have claims heard in state court." In re Castlerock Properties, 781 F.2d 159, 163 (9th Cir. 1986).
 14 The Ninth Circuit has adopted a multi-factor test laid out by a Texas bankruptcy court for courts
 15 to utilize when determining whether to exercise permissive abstention: "(1) the effect or lack
 16 thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent
 17 to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature
 18 of the applicable state law, (4) the presence of a related proceeding commenced in state court or
 19 other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the
 20 degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the
 21 substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state
 22 law claims from core bankruptcy matters to allow judgments to be entered in state court with
 23 enforcement left to the bankruptcy court, (9) the burden of [the court's] docket, (10) the likelihood
 24 that the commencement of the proceeding in a bankruptcy court involves forum shopping by one
 25 of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding
 26 of non-debtor parties." In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990).

27 The Ninth Circuit has held that "Section 1334(c) abstention should be read in pari materia
 28 with section 1452(b) remand, so that [§ 1334(c)] applies only in those cases in which there is a

1 related proceeding that either permits abstention in the interest of comity, section 1334(c)(1), or
 2 that, by legislative mandate, requires it, section 1334(c)(2)." In re Lazar, 237 F.3d 967, 981 (9th
 3 Cir. 2001). For example, in one case, "the Trustee successfully removed the Mandamus Adversary
 4 from state court, and, as a result, '[n]o other related [state] proceeding thereafter exists.'
 5 Accordingly, because there is no pending state proceeding, §§ 1334(c)(1) and 1334(c)(2) are
 6 simply inapplicable to this case." Id. (citing Security Farms v. International Brotherhood of
 7 Teamsters, 124 F.3d 999 (9th Cir. 1997)). A district court's decision not to remand is not
 8 reviewable per the express language of Section 1452(b). See In re Lazar, 237 F.3d 967, 982 (9th
 9 Cir. 2001) ("to the extent that the State Board appeals the bankruptcy court's decision against
 10 remanding the Mandamus Adversary, and 'to the extent that we are required to construe [the State
 11 Board's] motion to abstain as a motion to remand,' we lack jurisdiction over the appeal.") (internal
 12 citations omitted).

13 **2. Discussion**

14 Plaintiffs argue that abstention is mandatory under Section 1334(c)(2) because all the
 15 conditions of the subsection have been met. Plaintiffs argue that the motion to remand is timely;
 16 that the action is based on state law; the action does not "arise in" a bankruptcy case or "arise
 17 under" the Bankruptcy Code; there is no basis for federal jurisdiction under Section 1334; the
 18 action was commenced in state court; and the action can be "timely adjudicated" in state court.
 19 Mot. Remand, 13-16. Defendants argue that if the Court exercises "arising under" jurisdiction over
 20 Plaintiffs' claims, Section 1334(c)(2) does not apply. Opp'n at 19. If "related to" jurisdiction
 21 applies, Defendants argue that mandatory abstention is not required where a case is removed from
 22 state court to federal court, citing In re Lazar, 237 F.3d 967, 981-82 (9th Cir. 2001). In reply,
 23 Plaintiffs argue that mandatory abstention applies even where there is no pending state-court
 24 proceeding because the pendency of another proceeding is just one factor in determining whether
 25 to remand. Reply at 12.

26 Alternatively, Plaintiffs argue that the Court should exercise its discretion and abstain
 27 under 28 U.S.C. Sections 1334(c)(1) and 1452(b), based on the factors laid out in In re Tucson
 28 Estates. Mot. Remand at 17; 912 F.2d at 1166. Defendants do not address the factors laid out in In

1 re Tucson Estates to dispute whether permissive abstention apply and instead focus on factors laid
 2 out in a nonbinding district court case with regards to equitable remand provisions set forth on
 3 Section 1452(b). Opp'n at 20; Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 447 B.R.
 4 302, 311 (C.D. Cal. 2010). Defendants argue that under these factors, equitable remand is not
 5 required.

6 The Court finds that, consistent with In re Lazar and Security Farms, abstention does not
 7 apply here, where Defendants have successfully removed this case and where there is no pending
 8 state proceeding. 237 F.3d at 981; 124 F.3d at 1009. The Court does not interpret Plaintiffs' citation
 9 to Eastport Estates v. City of Los Angeles (In re Eastport Estates), 935 F.2d 1071, 1078 (9th Cir.
 10 1991), which predates both In re Lazar and Security Farms, to curb the express language in In re
 11 Lazar. Further, the facts of In re Eastport are distinct from the facts here. In that case, "no state
 12 court proceeding has ever been commenced...The only litigation on Eastport's entitlement was in
 13 the bankruptcy court, so if the bankruptcy court abstained Eastport would have to start its litigation
 14 over again in the state courts." In re Eastport Associates, 935 F.2d at 1078-79. In contrast, this
 15 instant case more closely mirrors the procedural history in In re Lazar, where the case was initially
 16 brought in state court and removed to federal court. 237 F.3d 967. Therefore, abstention does not
 17 apply, and the Court rejects Plaintiffs' arguments to abstain from exercising its jurisdiction over
 18 the matter.

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V. CONCLUSION

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IT IS ORDERED that Plaintiffs' Motion to Remand is DENIED. ECF No. 11.

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DATED July 7, 2016.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE